

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 11, 2008

**D050551        People v. Estrada**

The judgment is modified to award Estrada 112 (instead of 33) days of presentence conduct credit, and 224 (instead of 223) days of actual custody credit, increasing the total presentence credit from 256 to 336 days. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation. O'Rourke, J.; We Concur: McIntyre, Acting P.J., Aaron, J.

**D047364        Schaffter et al. v. Creative Capital Leasing Group LLC**

The judgment and order are affirmed. The matter is remanded to the trial court for its determination of an award to Schaffter of attorney fees on appeal. Schaffter and Re/Max are also entitled to costs on appeal. McConnell, P.J.; We Concur: O'Rourke, J., Aaron, J.

**D051164        People v. Soto**

Soto's prison prior enhancement is stricken rather than stayed. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting the modification and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. Huffman, J.; We Concur: Benke, Acting P.J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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August 11, 2008

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice and The Honorable Associate Justices Judith Haller and Alex McDonald.

**D051314        People v. Donovan**

Cause called on merits. Starr Jan Sinton argued for appellant. Alex Lowder, Certified Law Student argued for respondent. Mr. Sinton replied. Cause submitted.

**D050979        Parker-Montes v. Parker**

Cause called on merits. Richard R. Raverby argued for appellant Parker-Montes. Joshua Parker argued In propria persona. Cause submitted.

**D052314        In re Adrianna P. et al.**

Cause called on merits. Maryann Milcetic argued for appellant. Gary Seiser argued for respondent. Susan Bookout waived for minors. Cause submitted.

**D052400        In re Adrianna P. et al.**

Cause called on merits. Gary Seiser argued for appellant County Counsel. Susan Bookout argued for appellant minors. William Hook argued for respondent father. Neil Trop argued for respondent father. Mr. Seiser replied. Ms. Bookout replied. Cause submitted.

Court recessed at 10:45 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke.

**D051104        Gallagher v. Community Connection Resource Center, Inc.**

Cause called on merits. Samuel Kelsall argued for appellant. Robert L. Kenny argued for respondent. Mr. Kelsall replied. Cause submitted.

**D051599        In re James C., a Juvenile**

The part of the dispositional order that conditioned probation on James's living in Mexico and not returning to the United States is reversed. CERTIFIED FOR PUBLICATION. Huffman, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

**D053357        Lori B. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency**

The attorney for petitioner Lori B. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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**D053332        Terrance W. v. Superior Court of the County of San Diego/San Diego  
County Health and Human Services Agency**

The attorney for petitioner Terrance W. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
August 11, 2008 (Continued)

Court convened at 1:40 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion  
Clerk: M. Hubbard

**D050783        Sigelman v. Lawyers Mutual Insurance Company**

Cause called on merits. Cheryl A. Orr argued for appellant. Guy O. Kornblum argued for respondent. Ms. Orr replied. Cause submitted.

Court recessed to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

**D050939        Somo et al. v. Chevron Products, U.S.A.**

Cause called on merits. John Reaves argued for appellants. Brian Martin argued for respondent. Mr. Reaves replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 12, 2008

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion  
Clerk: D. Moore

**D051076        People v. Cardiel**

Cause called on merits. John L. Staley, Esq. argued for appellant. Jennifer, Chow, Certified Law Student argued for respondent. Cause submitted.

**D051510        Martini Ranch San Diego LLC v. Columbia Casualty Company**

Cause called on merits. David William Baumgarten, Esq. argued for appellant. Gregory B. Scher, Esq. argued for respondent. Mr. Baumgarten replied. Cause submitted.

Court recessed at 9:36 a.m. to change panel members. New panel members: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

**D050717        Barry v. Block et al.**

Cause called on merits. Steven A. McKinley, Esq. argued for appellant. Steven L. Victor, Esq. argued for respondent. Cause submitted.

**D051184        Starting v. County of San Diego**

Cause called on merits. Scott Adam Pactor, Esq. argued for appellant. Deborah A. McCarthy, Esq. argued for respondent. Mr. Pactor replied. Cause submitted.

Court recessed at 10:28 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre  
Clerk: D. Moore

**D051778        Adams et al. v. Fiserv ISS**

Cause called on merits. Patricia A. Meyer, Esq. argued for appellant. Eric Robert Maier, Esq. argued for respondent. Ms. Meyer replied. Cause submitted.

Court recessed at 1:40 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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August 12, 2008 (Continued)

**D051916        Gold et al. v. Sherpaul Corporation et al.**

Cause called on merits. Peter S. Gregorovic, Esq. argued for appellant. Wesley W. Peltzer, Esq. argued for respondent. Mr. Gregorovic replied. Cause submitted.

Court recessed at 1:51 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

**D051321        Benkosky et al. v. Darby**

Cause called on merits. William Hatcher, Esq. argued for appellant. Michael Wayne Jacobs, Esq. argued for respondent. Mr. Hatcher replied. Cause submitted.

**D051145        Hidden Valley Ranch et al. v. City of Poway**

Cause called on merits. Manuel Corrales, Esq. argued for appellant. Steven E. Boehmer, Esq. argued for respondent. Mr. Corrales replied. Cause submitted.

Court recessed at 3:41 p.m. until Wednesday, August 13, 2008 at 9:00 a.m.

**D053522        People v. Bradford**

The denial of a petition for writ of habeas corpus is not appealable. The appeal filed on August 6, 2008, is dismissed.

**D050747        People v. Payne**

The judgment is reversed as to the convictions for robbery and burglary in counts 3 and 4. In all other respects, the judgment is affirmed. Benke, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

**D050930        Gomez v. Drake Transport Inc., et al.**

The appeal is dismissed. Aaron, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

**D052721        People v. Armitage**

Upon filing an abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

**D053204        McAvoy et al. v. Superior Court of the County of San Diego/Levine**

The court has directed me to inform the parties that it is considering issuing a peremptory writ in the first instance (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

**D052314        In re Adrianna P. et al., Juveniles**

The judgments and orders are affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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**D053279        In re Myers on Habeas Corpus**  
The petition is denied.

**D053204        McAvoy et al. v. Superior Court of the County of San Diego/Levine**  
(Revised) The court has directed me to inform the parties that it is considering issuing a peremptory writ in the first instance in light of Payless Drug Store v. Superior Court (1993) 20 Cal.App.4th 277 and Tera Pharmaceuticals v. Superior Court (1985) 170 Cal.App.3d 530. (Palma v. U.S. Industrial Fasteners, Inc. (1984) 36 Cal.3d 171, 178.)

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**D049191           Great Western Drywall, Inc. v. Roel Construction Co., Inc.**

The judgment is reversed insofar as it awards Great Western \$36,961.14 in prejudgment interest on its liquidated contract claims and awards Roel \$26,287 for a cleanup contribution. The judgment is affirmed in all other respects. The order denying Great Western penalty interest is affirmed. The parties are to bear their own costs on appeal. McConnell, P.J.; We Concur: Haller, J., McIntyre, J.

**D052957           In re Sherry T., a Juvenile**

The appeal is dismissed. Huffman, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

**D053221           In re Perron on Habeas Corpus**

The petition is denied.

**D052800           In re Hunter D. et al., Juveniles**

The appeal is dismissed. Benke, Acting P.J.; We Concur: McDonald, J., Irion, J.

**D052317           Boone v. Arthur Bradley Design Build, Inc.**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

**D052900           In re Christine T., a Juvenile**

The appeal is dismissed. Irion, J.; We Concur: Haller, Acting P.J., McDonald, J.

**D049431           People v. Gomez**

Gomez's conviction for first degree murder is reversed. If the People do not bring Gomez to retrial on the first degree murder count within the time limit set forth in Penal Code, section 1382, subdivision (a)(2) (i.e., 60 days unless waived by defendant), the trial court shall proceed as if the remittitur constituted a modification of the judgment to reflect a conviction for second degree murder, and the trial court shall resentence Gomez accordingly. In all other respects, the judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.

**D050232           County of San Diego v. Crystal Lakeside Village Center LLC**

The trial court's August 4, 2006 order is reversed and the matter is remanded for further proceedings consistent with this opinion. The County is to bear Crystal's costs on appeal. Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.

**D052793           In re Jordan H., a Juvenile**

The appeal is dismissed. McDonald, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke  
Clerk: D. Moore



COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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August 13, 2008 (Continued)

**D051474        People v. Williams**

Cause called on merits. Wilson Adam Schooley, Esq. argued for appellant. Randall Einhorn, Deputy Attorney General argued for respondent. Mr. Schooley replied. Cause submitted.

Court recessed at 9:26 a.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

**D051471        In re Michael K., Juvenile**

Cause called on merits. Tejal S. Patel, Esq. argued for appellant. Heather McCauley, Certified Law Student argued for respondent. Ms. Patel replied. Cause submitted.

**D050838        Gogri v. Jack in the Box, Inc.**

Cause called on merits. Al Mohajerian, Esq. argued for appellant. Steven W. Sanchez, Esq. argued for respondent. Mr. Mohajerian replied. Cause submitted.

Court adjourned at 9:56 a.m.

**D053487        In re Miller on Habeas Corpus**

The petition is denied.

**D053328        In re Miller on Habeas Corpus**

The petition is denied.

**D053436        Clayton H. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Clayton H. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Clayton H. is DISMISSED

**D053405        Lindsay T. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Lindsay T. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Lindsay T. is DISMISSED

**D052859        In re Gloria S. et al., Juveniles**

The appeal is dismissed. Haller, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

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**D051745        People v. Vasquez**

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., McIntyre, J.

**D050957        People v. Bryant**

The judgment is reversed. Huffman, J.; We Concur: McConnell, P.J., Aaron, J.

**D052063        People v. Gallegos**

The judgment is affirmed. Aaron, J.; We Concur: McDonald, Acting P.J., Irion, J.

**D052669        In re Alexis T. et al., Juveniles**

The order is affirmed. Irion, J.; We Concur: McIntyre, Acting P.J., O'Rourke, J.

**D052838        In re J.W. IV., a Juvenile**

The order is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D052204        In re Yvonne W., a Juvenile**

The opinion filed July 28, 2008, is ordered certified for publication.

**D050826        Valdez v. Pizza Hut Inc., et al.**

The judgment is reversed and the trial court directed to enter an order denying defendants' demurrers to Valdez's complaint on the ground of res judicata, and sustaining the demurrers to Valdez's third and sixth causes of action for breach of contract and fraud without leave to amend. We leave it to the trial court to determine the extent and nature of discovery on the preclusive effect of the *Castillo* settlement and judgment should defendants move for summary judgment on that ground and Valdez seek discovery on the matter. (Code Civ. Proc., § 437c, subd. (h).) Valdez shall recover his costs on appeal. O'Rourke, J.; We Concur: McConnell, P.J., Benke, J.

**D052995        Wood v. Janopaul Block**

The court has received and considered the letter dated July 22, 2008, from counsel previously representing defendants The Ryness Company and Barbara Kushel, and the "Objection to Dismissal of Ryness Company" filed by appellant on August 5, 2008, in response to the court's July 25, 2008 letter proposing to delete the Ryness Company and Barbara Kushel as respondents in this appeal. The matter having been considered by Presiding Justice McConnell and Associated Justices Haller and McDonald, the appeal is DISMISSED as to the defendants The Ryness Company and Barbara Kushel on the grounds the notice of appeal filed on May 5, 2008, does not identify the judgment in favor of those defendants entered on November 5, 2007, and is untimely as to that judgment and the award of costs added to that judgment on or about November 26, 2007. The language concerning the Ryness Company and Barbara Kushel in the March 5, 2008 judgment is duplicative of the November 5, 2007 judgment and therefore is surplusage.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
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August 14, 2008 (Continued)

**D050562      Bayasi v. The Regents of the University of California**

The judgments are affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Nares, J.

**D049932      People v. Dye**

The judgment is affirmed. McConnell, P.J.; We Concur: Nares, J., O'Rourke, J.

**D052599      In re XAVIER R. et al., Juveniles**

The order denying the section 388 petition is affirmed. The orders terminating L.R.'s parental rights are reversed. The court is directed to require the Agency to fully comply with the notice requirements of the ICWA by providing proper notice to the Choctaw Nation of Oklahoma. If, after notice, the Choctaw Nation of Oklahoma exercises its right to intervene, the court is directed to hold a new section 366.26 hearing. If the Choctaw Nation of Oklahoma does not exercise its right to intervene, the court is authorized to reinstate the orders terminating parental rights. Aaron, J.; We Concur: Nares, Acting P.J., McDonald, J.

**D052559      In re Juan T., a Juvenile**

The orders are affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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**D051450        In re M.B., a Juvenile**

Judgment affirmed. Huffman, Acting P.J.; I Concur: Irion, J., Dissenting: Aaron, J.

**D050717        Barry v. Block et al./Barry**

The judgment is affirmed. Irion, J.; We Concur: McIntyre, Acting P.J., O'Rourke, J.

**D051184        Starting v. County of San Diego**

The award of attorney fees to John Paul Starting is reversed. In all other respects, the judgment is affirmed. The County of San Diego is to recover its costs on appeal. Irion, J.; We Concur: McIntyre, Acting P.J., O'Rourke, J.

**D052378        In re Chase T. et al., Juveniles**

The judgment is affirmed. Nares, Acting P.J.; We Concur: McIntyre, J., Irion, J.